Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Part 90 of the Commission's Rules to Improve Access to Private Land Mobile Radio Spectrum	)	WP Docket No. 16-261
Land Mobile Communications Council Petition for Rulemaking Regarding Interim Eligibility for 800 MHz Expansion Band and Guard Band Frequencies	)	RM-11719
Petition for Rulemaking Regarding Conditional Licensing Authority above 470 MHz	)	RM-11722

To: The Commission

COMMENTS OF MOBILE RELAY ASSOCIATES, LLC

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November 22, 2016

SUMMARY

Founded in 1979, Mobile Relay Associates, LLC ("MRA") is one of the longest-established and largest privately-held Private Mobile Radio Service ("PMRS") licensees in the United States, serving tens of thousands of Part 90 eligibles across the country.

As noted in the *NPRM*, *seriatim*, it was MRA that first studied the various 25 kHz buffers between spectrum allocations and then determined the feasibility of making more efficient use of spectrum by inserting new 4 kHz allocations into the fallow spectrum without overlapping pre-existing allocations. MRA is a leader in the development of new methods of increasing the efficiency of spectrum allocations. Additionally, MRA, as both a current licensee (via the waiver process) of certain of the frequencies the Commission is considering re-allocating to Part 90 PMRS use, as well as a licensee of adjacent Part 22 spectrum, is particularly well-suited to providing information on the real-world effect of the limited re-allocations already authorized by the Commission. MRA has a significant interest in the outcome of this proceeding.

The Commission should allocate each of 451/456.0000 MHz, 451/456.00625 MHz, 451/456.01250 MHz, 462/467.53750 MHz, 462/467.73750 MHz, 454/459.009375 MHz, 454/459.990625 MHz and 454/459.996875 MHz for IB licensing under Section 90.35 of the Rules. There has not been any instance of harmful interference to adjacent channel licensees under any of the waiver licensee operations on 451/456.00625 MHz, 451/456.01250 MHz, 462/467.53750 MHz, 462/467.73750 MHz or 454/459.009375 MHz. Nor, based on a review of the ULS database respecting adjacent-channel licensees in the GAARS, Broadcast Auxiliary or Public Safety bands, is there any rational basis for anticipating any such harmful interference in the future. As far as adjacent-channel Part 22 "paging" licensees holding auction spectrum at 454/459 MHz, that spectrum is almost uniformly dedicated at this time to industrial/business

PLMR-type use, employing the exact same equipment as is employed by IB licensees under Part 90 – *i.e.*, a completely compatible use. One of the largest such Part 22 "paging" auction winners/licensees is MRA itself.

The Commission should remove the central alarm station allocation for channels in the 460 MHz and 465 MHz bands, and open these frequencies up to IB licensing. The 40-year-old allocation of this spectrum to central alarm station usage has been rendered obsolete by changes in technology. The highest and best use of this spectrum is for industrial/business licensing.

Temporary or conditional licenses, in particular those which exist pursuant to Section 90.159 of the Rules, must be secondary to incumbent licensee operations during the pendency of the new entrant's application, and must be limited to six months' duration. Defective frequency coordinations take place with regularity; MRA alone has been victimized over a dozen times. And once such a defective coordination occurs, it takes the Commission *years* to correct the situation. (Section 90.159 should include spectrum above 512 MHz, as proposed.)

When a defectively- (or fraudulently-) coordinated applicant launches, it knocks the incumbent licensee off the air, the same as if the Commission had revoked the incumbent's license – except that the incumbent has been *de facto* revoked with no notice, no opportunity to be heard first, and no reason for the *de facto* revocation. Indeed, there is one such application filed in January, 2013, as to which MRA filed a timely protest, the applicant declined to respond, *and yet the application remains pending to this day, as the Commission has not had sufficient resources to work on it.*

Conversely, there is no downside whatsoever to having conditional licensees in secondary status. Where the frequency coordination is not defective or fraudulent, there will be

no harmful interference to incumbent licensees, and the conditional licensee can operate freely under the parameters of its pending application, exactly the same as if it were "primary."

For the same reason, conditional licensing must be limited to six months' duration, and if the application cannot be granted within six months, the applicant must shut down and await the processing of its application. Because if an application is not grantable, it means there is something seriously out of kilter, and conditional licensing is inappropriate.

Finally, the Commission should implement the LMCC proposal for a short, six-month window within which incumbent 800 MHz licensees within a given region can apply for EB/GB spectrum after the 800 MHz rebanding freeze is lifted within that region. This exclusive six-month window should cover all the unfrozen spectrum, and any incumbent 800 MHz licensee should be able to apply for any unfrozen spectrum for which it is eligible during this six-month window, without regard to how its incumbent 800 MHz license is classified.

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To: The Commission

COMMENTS OF MOBILE RELAY ASSOCIATES, LLC

Mobile Relay Associates, LLC ("MRA"), by its attorneys and pursuant to Section 1.419 of the Commission's Rules, hereby submits its Comments in response to the *Notice of Proposed Rulemaking*, FCC 16-110, released August 18, 2016 ("*NPRM*"), and published in the *Federal Register* on September 23, 2016. *See* 81 *Fed. Reg.* 65597. As discussed below, MRA heartily supports the bulk of the proposals put forth in the *NPRM*, which represents an effort by the Commission to relieve the continuing congestion in the Part 90 Private Mobile Radio Services ("PMRS"), and to carry out the Commission's statutory mandate to make efficient use of the nation's airwaves.

MRA and Its Interest in This Proceeding

Founded in 1979, MRA is one of the longest-established and largest privately-held Private Mobile Radio Service ("PMRS") licensees in the United States, serving tens of thousands of Part 90 eligibles across the country. MRA is one of only a few PMRS operators to

have in-house engineering expertise and resources; among other things, MRA is one of the few PMRS operators to have its own in-house capability for preparing TSB-88 interference analyses and for engineering design. Indeed, MRA provides engineering design, consulting and system management services to other Part 90 licensees in multiple markets.

As noted in the *NPRM*, *seriatim*, it was MRA that first studied the various 25 kHz buffers between spectrum allocations and then determined the feasibility of making more efficient use of spectrum by inserting new 4 kHz allocations into the fallow spectrum without overlapping pre-existing allocations. MRA is a leader in the development of new methods of increasing the efficiency of spectrum allocations. (Previously, MRA had initiated the concept of licensing narrowband (11 kHz) offset channels in the 470-512 MHz band, to relieve congestion, a now common practice.) Additionally, MRA, as both a current licensee (via the waiver process) of certain of the frequencies the Commission is considering re-allocating to Part 90 PMRS use, as well as a licensee of adjacent Part 22 spectrum, is particularly well-suited to providing information on the real-world effect of the limited re-allocations already authorized by the Commission. MRA has a significant interest in the outcome of this proceeding.

DISCUSSION

I. Adding These New Allocations to Part 90 PMRS Is the Optimum Policy

A. 451/456.0000 MHz, 451/456.00625 MHz and 451/456.01250 MHz

The Commission should allocate the three channel pairs, 451/456.0000 MHz, 451/456.00625 MHz and 451/456.01250 MHz for Part 90 Industrial/Business usage. MRA is currently licensed via the waiver process on the latter two channel pairs in the highly congested areas of southern California and south Florida, under call signs WQUF957 and WQUG244. MRA initiated operations on these channels in January, 2015, and there are hundreds of units

operating on this spectrum on a practically continuous basis. In the almost two-year period since MRA launched its operations on these channels, MRA has not incurred a single instance of harmful interference; nor has MRA received a single complaint or inquiry pertaining to possible harmful interference by MRA to any other Commission licensee. Since these channels can be used in the Miami-Ft. Lauderdale-West Palm Beach and Los Angeles-San Diego megalopolises without giving or receiving harmful interference, then obviously, these channels can be used in any U.S. metro area on an interference-free basis.

Based on both its real-world experience using 451/456.00625 MHz and 451/456.01250 MHz, and its engineering analysis of the types of equipment and emission bandwidths used in Part 74 Broadcast Auxiliary and Part 90 PMRS, MRA is convinced that if the third channel-pair in this band – 451/456.0000 MHz – was also re-allocated to Part 90 I/B usage, it can be occupied by Part 90 licensees without giving or receiving harmful interference to adjacent Part 74 operations, so long as the emission bandwidth is restricted to 4 kHz maximum. If limited to this very narrowband configuration, a channel centered on 451/456.0000 MHz would incur a maximum spectral overlap of 2 kHz with any adjacent Part 74 licensee, and then only if that adjacent Part 74 user was occupying its channel all the way to the band edge.

The likelihood of an adjacent Part 74 licensee actually occupying its licensed spectrum all the way to the band edge is basically non-existent. MRA conducted a ULS search of Broadcast Auxiliary licensees in Los Angeles County, California, on November 4, 2016. All were either: (a) licenses centered between 450.000-450.950/455.000-455.950 MHz, with an emission designator of either 50K0F3E or narrower, *i.e.*, at most a 50 kHz wideband channel extending 25 kHz in either direction from the centerpoint; or (b) licenses centered no higher than 450/455.990 MHz with an emission designator of 10K0F3E, *i.e.*, extending no higher than

450/455.995 MHz.[1] Stated otherwise, there is always at least a 5 kHz buffer between a Broadcast Auxiliary licensee and the edge of the Part 74 allocation. Thus, these licensees would not overlap spectrally with any IB licensee centered on 451/456.0000 MHz with a 4 kHz emission designator.

In previously denying a waiver request for the 451/456.0000 MHz channel-pair, the Wireless Bureau noted the existence of unlicensed low-power Part 74 devices which are allowed to operate all the way to the band edge, saying that a waiver would not be appropriate where there would be potential spectral overlap with such low-power devices.[2] Although granting a waiver might not be appropriate where there is potential spectral overlap, the rule can be changed herein, consistent with the public interest, because there is no real likelihood of such Part 74 operations either receiving or causing harmful interference.

These Part 74 devices are intended to transmit over distances of approximately 100 meters for uses such as wireless microphones, cue and control communications, and synchronization of TV camera signals. 47 C.F.R. § 74.801. Their maximum transmitter power in the 450-451 MHz and 455-456 MHz bands is one watt. 47 C.F.R. §74.861(d)(1). Because these devices are transmitting and receiving over such a short distance, they are much less susceptible to receiving harmful interference from potential Part 90 operations. And with a transmit power of only one watt, they are unlikely to cause harmful interference to future Part 90 operations.

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[1] The *only* Broadcast Auxiliary licensee with spectral overlap listed in ULS in southern California is "George E. Cameron Jr. Communications Inc.", with call sign KMM801. This entity has no FRN and no street address. This call sign is *not* associated with any Los Angeles-area broadcast station, *has not been renewed this century*, and apparently is in the ULS database by mistake.

[2] *See Mobile Relay Associates*, 29 FCC Rcd 7292, 7924 (¶6) & n.19 (WTB, 2014) ("*MRA BAS Order*").

Remember, in the vast majority of instances, the low-power Part 74 device will not be operating all the way to the band edge, so there will rarely be any spectral overlap. And in the unusual case where there is spectral overlap, the Part 90 operations would have to be in very close proximity to the part 74 operations for there to be interference, so even where there was spectral overlap, there would rarely be any interference. Finally, even if there were both spectral overlap and also close proximity, Part 74 low-power devices can easily be tuned to another channel within the Part 74 allocation for the duration of that particular temporary use.

In the *MRA BAS Order, supra*, 29 FCC Rcd at 7294, n.17, the Wireless Bureau also expressed concern about potential interference to temporary full-power Part 74 operations in which broadcasters can engage pursuant to Section 74.24 of the Rules. However, such temporary operations are conducted by broadcasters using the same types of equipment, and in the same frequencies, that those broadcasters use for their permanent Part 74 remote pickup activities. As such, there would be no spectral overlap between these temporary Part 74 operations and any Part 90 operations on 451/456.0000 MHz, and no harmful interference given or received.[3]

B. 462/467.5375 MHz and 462/467.7375 MHz

Allocation of frequency pairs 462/467.5375 MHz and 462/467.7375 MHz to Part 90 I/B is also in the public interest. MRA has been licensed on these channels across southern California in a centralized, trunked configuration for over two years now, under call signs WQTL440 and WQWF742. There are over a thousand units operating on these channels on a practically continuous basis. MRA has not incurred a single instance of harmful interference; nor

[3] The *NPRM*, ¶7, tentatively concluded *not* to add frequency pair 451/456.009375 MHz to Part 90, on the basis that adding this pair would conflict with the addition of 451/456.00625 MHz and 451/456.01250 MHz, and adding two frequency pairs is more spectrally efficient than adding only one pair. MRA agrees with this assessment, for the reason stated in the *NPRM*.

has MRA received a single complaint or inquiry pertaining to possible harmful interference by MRA to any other Commission licensee.

MRA is licensed for and is using a 4 kHz emission designator. So long as any new allocation to Part 90 is limited to 4 kHz emission designators, there will be no spectral overlap, no harmful interference, and a large benefit to the public interest by the amelioration of the existing congestion in Part 90.

C. 454/459.009375 MHz, 454/459.990625 MHz, and 454/459.996875 MHz

The *NPRM*, ¶7, specifically asked for comments "on whether any other interstitial frequencies should be added to the table [of allotments]." In so doing, the Commission put the public on notice that this proceeding will be reviewing *all* interstitial spectrum separating spectrum allocations, and that any such interstitial spectrum found to be appropriate for such re-allocation will be re-allocated in this proceeding, whether or not the Commission specifically identified the involved frequencies in the *NPRM*. In fact, there are three other frequency pairs, one of which has also been licensed to MRA via the waiver process already, which should be re-allocated to Part 90 IB operation: 454/459.009375 MHz, 454/459.990625 MHz, and 454/459.996875 MHz.[4]

MRA was licensed to operate in a centralized, trunked configuration on 454/459.009375 MHz across southern California under call sign WQYH415, and recently launched operations thereunder, trunking that frequency pair with MRA's adjacent Part 22 frequency pairs licensed

[4] In fact, in largely denying waiver applications for these three frequency pairs recently, the Commission specifically said the proper place to consider possible re-allocation of this spectrum for Part 90 IB use would be in the instant rulemaking. *See Mobile Relay Associates*, ____ FCC Rcd ___, 2016 FCC LEXIS 2900 (WTB, released August 29, 2016), ¶6 ("Whether Part 90 operation should be permitted on additional frequency pairs should be decided in the pending notice-and-comment rulemaking proceeding . . .").

under call sign WPVE956. There are over a thousand units operating on this trunked network, and as yet, MRA has neither suffered any harmful interference, nor to MRA's knowledge, caused any harmful interference to other licensees.[5]

As MRA has demonstrated, operation of this interstitial spectrum is compatible with adjacent Part 22 operations. In fact, the adjacent Part 22 operations are already fungible with Part 90 IB operations. In both instances, the licensee is operating a fleet-dispatch network which is *not* connected to the public telephone network, and thus *not* "Commercial Mobile Radio Service". In both instances, the licensee is using the same type of equipment from the same manufacturer. Stated otherwise, being adjacent to Part 22 is no different than being adjacent to another Part 90 allocation.

Nor is there anything unique with respect to Part 90 oil-spill-containment operations to distinguish them from other Part 90 operations from the standpoint of causing or receiving harmful interference. That is especially so where, as here, there is no spectral overlap. Exhibit 1 hereto provides a visual illustration of the absence of any spectral overlap, and the absence of any potential harm.

The same analysis holds for the two frequency pairs, 454/459.990625 MHz, and 454/459.996875 MHz, where the waiver requests were denied in their entirety. The two 454 MHz channels are between Part 22 General Aviation Air-Ground Radiotelephone Service ("GAARS") on their lower band edge, and Part 74 Broadcast Auxiliary on their upper band edge. The two 459 MHz channels are between the GAARS allocation on the lower band edge and Part 90 Public Safety on the upper band edge. But in neither case is there any spectral overlap with

[5] To be clear, not only has MRA's usage to date been completely compatible with MRA's adjacent Part 22 operations, but there have been no complaints or inquiries of any kind from any oil-spill-containment licensees on adjacent Part 90 spectrum.

adjacent allocations, demonstrated in Exhibit 2 attached hereto, a visual illustration of the absence of any spectral overlap, and the absence of any potential harm.

As discussed in Part I.A, *supra*, there are no Part 74 Broadcast Auxiliary licensees in southern California operating within 5 kHz of their band edge, and therefore probably none nationwide. There is no chance of harmful interference to or from these Part 74 licensees.

With regard to GAARS licensees, they are licensed for operation with a channel bandwidth of 20 kHz. *See* Section 22.805 of the Commission's Rules. The highest channel allocated in that service is the 20 kHz channel-pair centered on 454/459.975 MHz, *id.*, resulting in an upper band edge of 454/459.985 MHz (10 kHz above the centerpoint). That upper edge is 3.625 kHz away from the lower edge of the proposed 454/459.990625 MHz Part 90 IB allocation, precluding any harmful interference in either direction. (The distance between the highest GAARS allocation and the 454/459.996875 MHz is even greater than for 454/459.990625 MHz.)

Finally, with regard to Part 90 Public Safety operations (operations which utilize very similar or identical equipment to IB operations), there is no issue regarding potential harmful interference. In fact, there would still be a significant remaining buffer of unused spectrum between the proposed 459.996875 MHz IB mobile/portable channel on the one hand, and Part 90 operations on the other.[6] The closest Part 90 Public Safety allocation is for low-power campus-like facilities centered on 460.0125 MHz, with a bandwidth of 11.25 kHz, *i.e.*, with a lower band edge at 460.006875 MHz. This is 8 kHz removed from the upper edge of the proposed 459.996875 MHz IB channel. Even given the low-power nature of the incumbent Police Radio

[6] The relevant analysis involves only 459.996875 MHz, because the 459.990625 MHz channel is further removed from Public Safety; if the former channel can be allocated without harm to Public Safety, *ipso facto*, so can the latter channel.

operations, with a remaining buffer twice the width of the new IB transmissions, there is no real-world possibility of harmful interference.

D. 460.90625-.99375 MHz and 465.9000-.96875 MHz

In the *NPRM*, ¶¶11-14, the Commission proposes to amend Section 90.35 of the Rules by deleting Section 90.35(c)(63), and by removing any references to that deleted paragraph in section 90.35(b). MRA concurs in this proposed rule change. The allocation of this spectrum to central station alarm service, over forty years ago, has been rendered completely obsolete by changes in technology. Currently, this spectrum is lying fallow and completely underutilized. The public interest is best served by re-allocating this spectrum to IB usage.

II. An Editorial Correction Is Needed for Section 90.307(e) of the Rules

In the *NPRM*, ¶15, the Commission seeks suggestions on whether and where editorial updates and corrections may be required in Part 90. One place where such a correction/update is required is Section 90.307(e). This subsection sets forth the criteria for Part 90 licensees in the 470-512 MHz band to protect adjacent UHF-band television broadcast stations.

Section 90.307(e) has not been amended or updated since the 1980s, and as promulgated in the 1980s, states as follows:

> The television stations to be protected (co-channel, adjacent channel, IM, and IF) in any given urbanized area, in accordance with the provisions of paragraphs (a), (b), (c), and (d) of this section, are identified in the Commission's publication "TV stations to be considered in the preparation of Applications for Land Mobile Facilities in the Band 470-512 MHz." The publication is available at the offices of the Federal Communications Commission in Washington, DC or upon the request of interested persons.

Unfortunately, that publication, "TV stations to be considered in the preparation of Applications for Land Mobile Facilities in the Band 470-512 MHz" (the "Outdated Analog TV List"), is based upon the Commission's Table of Allotments for *analog* television broadcast stations, *as that*

Table of Allotments existed in the 1980s! In the generation and a half that has gone by since then, the Commission completely revamped its television broadcast Table of Allotments, including, in particular, a complete revamping when the broadcast industry moved from analog to digital transmission.

The Commission should use this proceeding to update Section 90.307(e), so that it reflects the current television Table of Allotments.

III. Temporary and Conditional Permits Should Be Secondary and Limited to Six Months

The *NPRM*, ¶23, asks for comment on whether conditional licenses (for applications which have been filed and are pending at the Commission) pursuant to Section 90.159 of the Rules should be secondary to permanent authorizations, should be limited to unopposed applications, and should be limited to six months duration. The answer to all three questions is an emphatic "yes".[7]

A. There Is a Huge Downside to Conditional Licensees Being Primary

In the real world, allowing conditional licensees to be primary, and to operate beyond six months even if their application is not grantable by then, produces enormous disruptions and dislocations.

A typical example is the application, File No. 0005614865, of Acumen Communications ("Acumen"). In that case, Acumen began operating in a centralized trunked format (non-monitoring facility), co-channel to MRA's incumbent license WQGW503 in July, 2012, without filing any FCC application. After MRA complained to the Commission about harmful

[7] The Commission also asks whether Section 90.159 of the Rules should be expanded to include frequencies above 512 MHz. MRA supports such an expansion; there is no rational basis for differentiating between the spectrum above or below 512 MHz for purposes of conditional licensing.

interference from an unidentified pirate facility, the Enforcement Bureau visited Acumen and notified it that it was operating unlawfully without any Commission authorization on the channel. Rather than cease transmitting, Acumen in January, 2013 filed its FCC application for the channel (File No. 0005614865), after obtaining a frequency coordination. (That frequency coordination was not "defective" *per* se, because it proposed FB6 operations, *i.e.*, shared use and monitoring of co-channel transmissions, and an ERP of only two watts.) MRA protested the application[8] and served Acumen with the protest. Acumen declined to file any opposition to MRA's protest.

Acumen continued to operate pursuant to Section 90.159, and continued to make MRA's incumbent channel unusable, until November, 2014, almost two years. Acumen ceased operating only because MRA had sued Acumen in court for money damages for various torts Acumen had committed, and Acumen had signed a settlement agreement to cease operating. *Meanwhile, Acumen's application, File No. 0005614865, remains pending to this day!* But for the fact Acumen committed torts which led to a lawsuit, MRA would still be off the air on its incumbent channel. Due to the current FCC budget constraints, there is no basis for believing that defective applications will be dismissed.[9]

Defective frequency coordination occurs with regularity. MRA alone has been the victim of defective frequency coordinations that led to harmful interference to its protected incumbent

[8] Among other things, MRA noted that Acumen was operating with an uninterrupted data stream, using equipment incapable of monitoring co-channel transmissions, that Acumen was operating very high power, and that Acumen's application was therefore a fraud upon the Commission.

[9] All of the foregoing assumes the incumbent even finds out about the defective coordination before the defective application is granted. By definition, a defective coordination means the coordinator failed to notify the incumbent prior to the application being filed, so in the normal course, the incumbent will only learn of the grant of the defective application the hard way – when the applicant goes on the air and knocks the incumbent off the air.

facilities on over a dozen occasions.[10] And MRA is just one licensee. Indeed, MRA has a pending petition for reconsideration right now, where there was a defective coordination (as even the coordinator involved admits), but the entity causing the interference is operating nonetheless, as the Commission does not have sufficient staff resources to fix such problems.[11]

B. There Is No Downside to Conditional Licensees Being Secondary

As with any policy question, the Commission must here weigh the relative risks and benefits of potential policy choices. However, there is no risk or downside whatsoever to classifying conditional permits as secondary or limiting their duration to six months. As the Commission notes, Part 90 applications are subject to pre-filing frequency coordination. Where, as in most cases, the coordination has no mistakes, *ipso facto*, there will be no harmful interference to incumbents, and the entity operating with a "secondary" authorization pursuant to Section 90.159 will operate exactly the same as it would if it were "primary", because no incumbent will complain. Since there would be no constraints upon the entity operating pursuant to Section 90.159, there is no detriment to the public interest.

Conversely, where, as is sometimes the case, there is a defective frequency coordination, under the current rule the incumbent licensee has its incumbent license *de facto* revoked – without any notice or opportunity to be heard! As discussed in Part III.A, *supra*, where there is a defective frequency coordination, it takes years before the Commission will dismiss the

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[10] Twelve representative *examples* of applications filed by others where the Commission subsequently (sometimes years later) determined that the original frequency coordination had been defective and caused harmful interference to protected incumbent MRA facilities are File Nos.: 9808D112885 (pre-ULS); 0000415681; 0000693489; 0002919005; 0002919006; 0002919011; 0002919012; 0002919013; 0002920691; 0003431479; 0003697839; and 0004290038.

[11] *See* Jamul Indian Development Corp., File No. 0007297986, petition pending for reconsideration and/or for Section 316 modification of newly-issued call sign WQXU512.

application, and meanwhile the innocent incumbent licensee is knocked off the air due to pervasive interference.

Balancing the pros and cons, we have: without conditional licensing being secondary, incumbent licensees have been and will continue to be knocked completely off the air for a year or longer; vs. secondary status has no adverse effect on conditional licensees (since when coordination is proper and the licensee operates as set forth in that coordination, secondary licensing results in the applicant operating the same as if it were primary). Patently, mandating secondary status for conditional licensees best serves the public interest.

For the same reasons, conditional licensing should be limited to unopposed applications, and conditional licensing should be limited to six months duration. If an application is opposed, it is almost always going to be on the basis that either: a) the coordination was defective; or b) as with Acumen, *supra*, the applicant is not operating within the parameters of its coordination. Hence it makes no sense to allow conditional licensing where there is a protest/informal objection. Also, if the coordination is proper, the application almost certainly will be processed and granted within six months from filing. If the Commission is unable, after the passage of six months, to determine that an application is grantable, that is a loud and clear signal that something is very wrong and that conditional licensing is inappropriate in that instance.

IV. A Six-Month Window for Incumbent 800 MHz Licensees to File in the EB/GB Bands Is Appropriate

MRA supports the proposal from the Land Mobile Communications Council ("LMCC") to have a short, six-month window within which only incumbent 800 MHz licensees within a region can file for additional 800 MHz Expansion Band or Guardband ("EB/GB") spectrum once the rebanding is complete and the 800 MHz filing freeze is lifted. Incumbent 800 MHz licensees have suffered for years and years of being unable to modify or improve their existing systems

due to the filing freeze imposed in connection with the 800 MHz rebanding effort. Their sunk investment in their current facilities has suffered, and affording them the short filing window proposed by the LMCC is consistent with the public interest.

In almost every case, it is infeasible for any new entrant to succeed in launching a new PLMR system using EB/GB spectrum; there is simply not enough such spectrum to become available in any major market for a new entrant to have a sufficient coverage footprint. Moreover, new entrants that did not already have a sunk investment in 800 MHz facilities have been free during the past eleven years of the freeze to design and launch PLMR systems using other spectrum bands, such as VHF or UHF, because unlike incumbents, new entrants did not have such a sunk investment and were free to use any available frequencies that were not frozen.

In the very few instances, in rural areas, where there is a large amount of EB/GB spectrum available for a new entrant, there is also far less pent-up demand from incumbents, and the EB/GB spectrum will still be there for the new entrant when the six-month window expires. (That is why a six-month window is appropriate; it balances the need to satisfy pent-up demand from incumbents with the need to get the spectrum back into use expeditiously.)

This six-month window for incumbent 800 MHz licensees should also be implemented for the EB/GB SMR spectrum. The same considerations apply for this band as for the other EB/GB spectrum – there is a large amount of pent-up demand from incumbents who have been frozen out of improving their operations; there is insufficient spectrum to be unfrozen to enable a new entrant to obtain a sufficient coverage footprint; and new entrants have been able to launch if they wanted in another spectrum band, since they had no sunk investment in this 800 MHz band. Moreover, it is irrelevant that "SMR licensees compete for customers in the commercial wireless marketplace", *NPRM*, ¶33. In this band, SMR licensees are uniformly providing fleet-

dispatch service on a *non-interconnected* basis to business fleets. Any SMR providing an interconnected service resembling CMRS is doing so in the ESMR band, not in the EB/GB bands.[12] SMRs in these bands are more akin to IB licensees than they are to cellular carriers.

For the same reasons, the six-month window should include the GB spectrum within the EB/GB bands.

Finally, in terms of implementation, the Commission should allow *any* incumbent 800 MHz licensee (other than ESMR) within a region, whether Private Radio or Public Safety, to apply for any channels for which it is eligible during the six-month window. In the case of for-profit entities that are eligible to be either IB or SMR, any entity holding either an SMR or IB authorization should be eligible to apply for channels for which either an IB or SMR entity would be eligible normally, without regard to the type of authorization the entity happens to already hold within that region. Similarly, entities that might be eligible to apply either for IB or Public Safety channels (such as a state university) should be eligible to apply for any available spectrum in either pool, without regard to the type of authorization which happens to give it status as an incumbent. The key is that incumbents with pent-up demand should be able to apply for spectrum during the window, before new entrants that have absolutely no existing investment in 800 MHz within that region.

CONCLUSION

The Commission should allocate each of 451/456.0000 MHz, 451/456.00625 MHz, 451/456.01250 MHz, 462/467.53750 MHz, 462/467.73750 MHz, 454/459.009375 MHz, 454/459.990625 MHz and 454/459.996875 MHz for IB licensing under Section 90.35 of the Rules. There has not been any instance of harmful interference to adjacent channel licensees

[12] While interconnect is lawful in the EB/GB bands, it is not occurring in the real world.

under any of the waiver licensee operations on 451/456.00625 MHz, 451/456.01250 MHz, 462/467.53750 MHz, 462/467.73750 MHz or 454/459.009375 MHz. Nor, based on a review of the ULS database respecting adjacent-channel licensees in the GAARS, Broadcast Auxiliary or Public Safety bands, is there any rational basis for anticipating any such harmful interference in the future. As far as adjacent-channel Part 22 "paging" licensees holding auction spectrum at 454/459 MHz, that spectrum is almost uniformly dedicated at this time to industrial/business PLMR-type use, employing the exact same equipment as is employed by IB licensees under Part 90 – *i.e.*, a completely compatible use. One of the largest such Part 22 "paging" auction winners/licensees is MRA itself.

The Commission should remove the central alarm station allocation for channels in the 460 MHz and 465 MHz bands, and open these frequencies up to IB licensing. The 40-year-old allocation of this spectrum to central alarm station usage has been rendered obsolete by changes in technology. The highest and best use of this spectrum is for industrial/business licensing.

Temporary or conditional licenses, in particular those which exist pursuant to Section 90.159 of the Rules, must be secondary to incumbent licensee operations during the pendency of the new entrant's application, and must be limited to six months' duration. Defective frequency coordinations take place with regularity; MRA alone has been victimized over a dozen times. And once such a defective coordination occurs, it takes the Commission *years* to correct the situation. (Section 90.159 should include spectrum above 512 MHz, as proposed.)

When a defectively-coordinated applicant launches, it knocks the incumbent licensee off the air, the same as if the Commission had revoked the incumbent's license – except that the incumbent has been *de facto* revoked with no notice, no opportunity to be heard first, and no reason for the *de facto* revocation. Indeed, there is one application with a defective coordination

filed in January, 2013, as to which MRA filed a timely protest, the applicant declined to respond, *and yet the application remains pending to this day, as the Commission has not had sufficient resources to work on it.*

Conversely, there is no downside whatsoever to having conditional licensees in secondary status. Where the frequency coordination was not defective, there will be no harmful interference to incumbent licensees, and the conditional licensee can operate freely under the parameters of its pending application, exactly the same as if it were "primary."

For the same reason, conditional licensing must be limited to six months' duration, and if the application cannot be granted within six months, the applicant must shut down and await the processing of its application. Because if an application is not grantable, it means there is something seriously out of kilter, and conditional licensing is inappropriate.

Finally, the Commission should implement the LMCC proposal for a short, six-month window within which incumbent 800 MHz licensees within a given region can apply for EB/GB spectrum after the 800 MHz rebanding freeze is lifted within that region. This exclusive six-month window should cover all the unfrozen spectrum, and any incumbent 800 MHz licensee should be able to apply for any unfrozen spectrum for which it is eligible during this six-month window, without regard to how its incumbent 800 MHz license is classified.

Respectfully submitted,
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